

To: Suplee, Mike[msuplee@mt.gov]; Mathieus, George[gemathieus@mt.gov]; Eric Urban[eurban@mt.gov]
From: Laidlaw, Tina
Sent: Mon 11/4/2013 11:30:21 PM
Subject: RE: Downstream Use Protection Discussion

Hey Guys,

I wanted to follow up with you guys on the downstream use protection issues on the language that seemed to be the most confusing to the League folks last week. The language can be found in DEQ's Nutrient Standards version 7.8 Statement of reasonable necessity (page 3). I am reviewing the text with our Regional Counsel and we may have some suggested language revisions for you. One thing our attorney caught is that we would recommend removing the term "must" (see highlights below). I think many of these details described in this section are now covered in the Implementation guidance -- so perhaps most of this text can be removed?

Let's discuss more on Friday. Just wanted to bring this to your attention.

Tina

"Since this relates to economic impacts, as described at 75-5-313(1), MCA, the department believes these situations are best addressed as individual variances. Nutrient limitation status of waterbodies can change due to a number of factors, for example due to substantive nonpoint source cleanups upstream of the discharger. Therefore, status monitoring by dischargers receiving this type of individual variance is required per New Rule I (3)(a). The potential impacts to the downstream waterbody, including impacts from the non-target nutrient, **must** be given consideration in all cases where New Rule I (3) is invoked. As described in section 2.2 of DEQ-12 Part B, if a downstream waterbody will be impacted, some level of reduction on the target and/or non-target nutrient will likely be required, or the individual variance may not be granted."